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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,861	03/29/2004	Orville Alan Breazeale	340371	9849

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EXAMINER

ADDIE, RAYMOND W

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/810,861	Applicant(s) BREAZEALE ET AL.	
	Examiner Raymond W. Addie	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10,12-23,25 and 26 is/are rejected.
- 7) ☒ Claim(s) 11 and 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |



DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6, 13-15, 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the relationship between the sharp top of the tubular member and a tire of a vehicle, as the vehicle passes over the bump canister. **There appears to be a word or phrase missing from line 3, the phrase "sharp top end that is capable of a tire of the vehicle."**

For Examination purposes, the limitation is interpreted to require a top end of the bump canister to be "capable of contacting a tire of the vehicle".

Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: directed to how the claimed magnet raises the bump canister. How exactly is the function performed?

How would one of ordinary skill in the art, reading the claims understand how to make and or use the claimed invention without extensive knowledge of the specification?

Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term “bump canister articulating between an extended position and a retracted position” in claim 13 is used by the claim to mean “slide able or telescopic between said extended position and said retracted position”, while the accepted meaning is “to have a hinge or pivot connection esp. to allow negotiation of sharp turns.” The term is indefinite because the specification does not clearly redefine the term. **For Examination purposes;** the limitation is seen to require an axial extension of the bump canister within the interior of the housing.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the bump canister articulating between an extended position and a retracted position, as recited in Claim

13; as well as the "bump canister being raised to its extended position by a magnet", as cited in Claim 26 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended."

If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 7, 8, 12-18, 20, 21, 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Hensley # US 2005/0031411 A1.

Hensley discloses a bollard (10), intended to limit the speed of a motor vehicle, the bollard comprising:

A housing (16) having an open top, a bottom (50), and a hollow interior. See Fig. 2.

A plate (26) slidably disposed within the interior of the housing (16).

A bump canister (11) disposed within the interior of the housing and capable of selectively protruding through said open top of said housing (16).

At least one pressure source (24, 34) connected to the housing (16). At least one (34) of said pressure sources being capable of placing hydraulic or pneumatic pressure on the lower surface of the plate (26).

Wherein said pressure applied to the lower surface of the plate (26) causes the bump canister (11) to protrude through the open top of the housing (16); and when no pressure is applied, by said pressure source (34), the bump canister (11) is caused to slide downwardly toward the bottom of the housing.

In regards to claims 2-5, 14-18 Hensley discloses the use of a speed sensor, in the form of a radar antenna (86/94), that detects the speed of the vehicle, and if said vehicle speed is greater than a predetermined speed, the speed sensor, in conjunction with a computer (88) raises the bump canister (11) proportionally to the speed of the vehicle over the predetermined speed. See paragraphs [0065]-[0074]. Wherein said sensor further comprises a sensor loop (74-80) that is buried within the path of travel of the vehicle. See Figs. 1-8.

In regards to claims 7, 8, 12 Hensley discloses the housing (16) is buried within a roadway, such that the top of the housing is flush with the roadway (14), and further comprises a ramp member (18), which is capable of being removably seated onto an existing roadway. See Fig. 1.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley #

US 2005/0031411 A2 in view of Soleau # 5,904,443.

Hensley discloses a speed control device as put forth with respect to claims 1, 13 to

include the bump canister comprising at least one tubular member (11), see Figs. 3, 4. And the top (44) of the canister (11) is angled and capable of contacting a vehicle tire; but does not disclose providing the top (44) of the canister with a "sharp" top end. However, Soleau teaches speed controlling devices, primarily disposed below a road surface (7) are advantageously provided with tire deflating spikes (1) movable between a retracted position, within a housing (6), and an extended position, wherein when in the extended position the tire spikes (1) are capable of contacting and deflating a vehicle tire passing over said speed controller. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide a speed controlling device of Hensley, with extendable tire spikes, as taught by Soleau, in order to immobilize a vehicle.

4. Claims 9, 10, 22, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley # US 2005/0031411 A1 in view of Blau # 4,373,464.

Hensley discloses a speed controlling device as put forth with respect to claims 7, 20 above, to include the use of a bump canister top (44) that is rounded. But does not disclose disposing the housing above the roadway. However, Blau teaches it is known to provide speed controlling device, such as bollards, with a surface mounted support housing (13) for securing a traffic bollard to the top of a roadway surface. The housing facilitating recovery of the bollard after being impacted by a motor vehicle.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the speed controlling device of Hensley, with a surface mounted housing, as taught by Blau, in order to prevent destruction of the traffic bollard. See Blau Col. 2.

5. Claim 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley # US 2005/0031411 A1 in view of Johnson # 6,848,856 B2.

Hensley discloses a speed control device as put forth with respect to claims 1, 13 to include the bump canister but does not disclose the use of magnet power. However Johnson teaches it is known in field of retractable traffic bollards to use magnets (50) mounted within the housing to assist raising and lowering the retractable bollard tube (12). Therefore, it would have been obvious to one of ordinary skill in the art, to provide the speed traffic control device of Hensley, with magnets, as taught by Johnson, in order to facilitate accurate extension and retraction of the bollard tube. See Johnson, col. 5.

Allowable Subject Matter

6. Claims 11, 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dickinson # 4,097,170 discloses a modular traffic controller. Dickinson # 4,576,508 discloses a traffic bollard. Riley # 4,666,331 discloses a traffic bollard. Callhan # 4,737,049 discloses a retractable road reflector. Paulos # 5,074,706 discloses a raised pavement marker. Higginson # 5,192,159 discloses a security post. Welford # 5,267,808 discloses an electronically controlled speed bump. Beavers # 5,397,197 discloses a resilient bollard. Follman # 6,010,277 discloses a retractable speed bump. Pepe et al. # 6,099,200 discloses an anti-terror bollard.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Addie whose telephone number is (571) 272-6986. The examiner can normally be reached on Monday-Saturday from 7:00 am to 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (571) 272-6998.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Raymond Addie
Patent Examiner
Group 3600

RWA
4/16/2005